



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: NOVEMBER 18, 2022

IN THE MATTER OF:

Appeal Board No. 625261

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 625259, 625260 and 625261, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed August 12, 2022, insofar as they overruled the initial determinations holding the claimant ineligible to receive benefits, effective June 29, 2020 through March 14, 2021, on the basis that the claimant was not totally unemployed and/or had earnings over the statutory limitation; charging the claimant with an overpayment of \$3,003 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4); \$2,548 in extended benefits recoverable

pursuant to Labor Law § 597 (4); \$1,200 in Federal Pandemic Unemployment

Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$3,003 in Pandemic Emergency Unemployment Compensation (PEUC) benefits recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$300 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 192 effective days and charging a civil penalty of \$1,463.10 on the basis that

the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, testimony was taken. There was an appearance by the claimant.

The Board considered the arguments contained in the written statement

submitted on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. On appeal, the Commissioner of Labor contends that there is evidence in the case file that should have been considered by the Judge. In particular, the claimant should be confronted with the 2021 paycheck documents and 2020-2021 timecard information for the claimant, which should be part of the record so that they may be considered in rendering a decision in this matter.

In addition, the claimant should produce her personal tax returns with all attachments and schedules, including W-2 and 1099 for 2020 and 2021. In this regard, two weeks before the hearing date, the claimant is to submit to the hearing section her personal tax returns with all attachments and schedules, including W-2 and 1099 for 2020 and 2021. If the claimant does not produce the tax documents, the Administrative Law Judge may consider her failure to do so when making his decision. The tax documents should be entered into the record in the usual manner.

Before the hearing, the claimant and employer are to be sent the transcript of the August 8, 2022 hearing. The employer is to appear at the remanded hearing and produce a witness to testify regarding the 2021 paycheck documents, the 2020-2021 timecard information for the claimant, and the e-mail produced by the claimant, which has been identified as Hearing Exhibit 3. The employer is also to be given the opportunity to cross-examine the claimant on her testimony and to comment or object to the continuation of documents as exhibits.

The Commissioner of Labor should produce testimony and other evidence regarding the work question the claimant would have been asked beginning January 18, 2021 with instructions, if any, as part of the weekly certifications. The representative should be questioned on the Inquiry Screens (LO404), identified as Hearing Exhibit 6, including the fourth page which indicates that benefits for the week ending October 18, 2020, which is not included in the ineligibility determination, are part of the EUC \$546 overpayment and the certification made on October 18, 2020 has been included in the initial determination of willful misrepresentation.

Finally, the parties should have another opportunity to submit additional testimony and other evidence on the issues of lack of total unemployment, recoverable overpayment, and willful misrepresentation.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge, insofar as they sustained the initial determinations of lack of total unemployment, recoverable overpayment, and willful misrepresentation, be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of lack of total unemployment, recoverable overpayment, and willful misrepresentation only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to

be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues of lack of total unemployment, recoverable overpayment, and willful misrepresentation, which shall be based on the entire

record in this case, including the testimony and other evidence from the original and the remand hearings, and

which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER